State of Utah
Department of Commerce
Division of Public Utilities

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ACTION REQUEST RESPONSE

To: Utah Public Service Commission

From Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Energy Section Manager

Doug Wheelwright, Technical Consultant

Eric Orton, Technical Consultant

Jeff Einfeldt, Utility Analyst

Date: May 11, 2018

Re: **Suspend Tariff 8.08, Billing for Other Entities**

Docket No. 18-057-07, Dominion Energy – Gas Line Coverage Letter

RECOMMENDATION (Suspend Tariff—Solicit Further Comments)

The Division of Public Utilities (Division) recommends that the Public Service Commission of Utah (Commission) suspend Dominion Energy Utah's (Utility) tariff 8.08, Billing for Other Entities, until investigation of recent mailings is complete. Regulators and other interested parties need additional time to perform more in-depth analysis and to take additional steps regarding the correspondence (Solicitation Letter) recently sent to the Utility's customers and it or its affiliate's apparent behavior connected with a third party provider (HomeServe) to solicit the Utility's customers to purchase HomeServe insurance for their natural gas line.

The Division also requests the Commission provide a period for other parties to offer comments and reply comments as necessary to fully investigate and make recommendations. It appears that

Dominion, either the Utility or its affiliate, may have violated the November 20, 2017 Commission order requiring the third-party billing program be administered in a non-discriminatory manner. The Division will continue investigating whether any other provisions of law have been violated.

ISSUE

On June 1, 2017, the Utility filed a request seeking Commission approval to include invoicing for third parties on its utility bill. On November 20, 2017, the Commission issued its final order in that docket approving third-party billing as stipulated. The Utility made various representations in that docket that it would administer the third-party billing program even-handedly.

Around the first of May 2018, the Utility's customers began receiving solicitation letters mailed, or allowed to be mailed, to its customers on behalf of HomeServe. The Solicitation Letter seeks customer authorization to charge a monthly fee of $5.49 to provide insurance for the customer's gas line. The insurance would cover "the cost to repair or replace a leaking or broken gas line," beginning at the customer's natural gas meter through to the termination point of their natural gas appliance(s).

The Solicitation Letter was produced on Dominion letterhead, was mailed in Dominion envelopes, and appears to be from the customer's natural gas utility. Since distribution of the Solicitation Letter began, the Division has received hundreds of inquiries concerning the ambiguity and authenticity of the Solicitation Letter. The Solicitation Letter notes a partnership between Dominion and HomeServe. This seems to violate the Utility's representations that it would administer the third-party billing program neutrally and the Commission's requirement that it do so.

The Solicitation Letter, as indicated from the numerous inquiries, is potentially confusing and perhaps deceptive making it appear to the Utility's customers that the utility is providing or strongly endorsing this service. Also, the Division is concerned that certain customer groups will mistakenly interpret the offering as mandatory and thus sign up for the gas line insurance they might not otherwise choose. To even a fairly sophisticated reader, the mailing is not clear.

DISCUSSION

The Third-Party Billing Rate, Docket No. 17-057-T04, specified the Utility's ability to include third-party billing services on the Utility's invoices to its customers and set a rate that the Utility collects for providing that service. On or before May 1, 2017, the Division's Customer Service Section began receiving notifications from the Utility's customers asking questions about this Solicitation Letter. As of May 9, 2018, over 342 customers have contacted the Division complaining about this HomeServe mailer with positions ranging from expressing confusion to extreme irritation. The customer responses fielded by the Division indicate that this mailer was not clear to the public. In many cases, the mailer was received concurrently with the customer's monthly gas bill.

On May 2, 2018, the Division received its Action Request from the Commission directing the Division to "Please investigate whether this service offering complies with all applicable statutes, regulations, tariffs, and prior PSC orders." It also enclosed a copy of the Solicitation Letter with the Action Request.

On May 3, 2018 the Division issued a set of Data Requests to the Company containing 18 questions, the purpose of which was to determine the extent of the facts available regarding this solicitation and its use of customer information. The Utility has indicated its desire to cooperate and that local management was unaware this HomeServe solicitation was happening. The Division received responses on May 9, 2018.

Even with the rapid response of the Company in answering the Division's data requests, the Division has not yet completed its investigation and is committed to thoroughly investigate this issue. Some facts learned from those requests are included in this memorandum. However, a fuller explanation might be offered in future comments, which the Division suggests the

Commission require. However, sufficient information is known to justify suspension and possible revocation of the third-party billing tariff.

The Commission's order required "Dominion [to] comply with all statutory requirements and act in a non-discriminatory manner."[1] Giving privileged access to captive Utility customers for one vendor plainly violates the Commission's prescription.[2] The violation cannot be remedied without providing similar access to utility customers for other vendors, which is not in the public interest. Allowing such access would raise similar confusion and privacy concerns customers have expressed in response to the Solicitation Letter. The Division requests the Commission immediately suspend the Company's tariff 8.08 and consider revoking it.

Anecdotally, the Division is aware that some customers have signed up for the service and some who signed up have cancelled or expressed a desire to do so. Some may also wish to keep it. The Division and Utility personnel have worked to respect those customers' wishes concerning the service. However, the Division has only had contact with a small number of customers that actually received the mailing. Suspending the third-party billing tariff is advisable to ensure that customers who unwittingly signed up are not charged, to provide customers who wish to cancel a meaningful opportunity to do so, and to allow the Commission time to determine whether, and to what extent, the Utility or its affiliate has violated any relevant law. HomeServe may implement its own billings for those customers who wish to obtain their service, at least until the Commission concludes its review. The Commission should also consider actions beyond suspension or revocation of the tariff to protect the public interest in effective regulation of the Utility, especially in light of its monopoly power.

The Utility sought approval to modify its natural gas tariff to allow the Utility to include billings for third party services on its monthly customer bills and to charge those third parties for the billing services. The Utility's application and proposed tariff was silent regarding solicitation by

[1] Docket No. 17-057-T04, November 20, 2017 Order, 7.
[2] Whether the Solicitation Letter is the fault of the Utility or an affiliate, given the use of Utility customer information and the letter's clear implication of endorsement by the Utility, the Utility cannot be absolved of responsibility for the mailings even if its personnel were unaware of it.

third parties for home protection warranty programs. The Utility did not seek approval to offer, sponsor, co-sponsor or aid in the solicitation of customers for such services. The Utility sought only permission to include the billing of such services on its monthly bill.

In testimony supporting the Utility's application to modify its tariff, the Utility stated that "the bill and the third-party's marketing materials must clearly distinguish between Dominion Energy and the third party". In retrospect, perhaps more discussion of clearly distinguishing the Utility from its affiliates would have been helpful. Given that the solicitation was mailed in a Dominion envelope and printed on Dominion letterhead, referring to a website heavily branded with the Dominion logo, it is obvious that little care was taken to distinguish Dominion from the third-party, and no care was taken to distinguish the Utility from any affiliate. In fact, the notable absence of any HomeServe branding on the mailings suggests a deliberate effort to avoid clarity. In short, the Utility's monopoly position, with privileged access to utility customer information, was leveraged for gain by an affiliate and HomeServe.[3]

Based on recent conversations, it appears that the Utility's personnel were largely, or completely, unaware of the mailings and the transactions that led to them. However, the Utility is responsible for how its brand and customer information are used. Thus, it appears that a Utility affiliate used Utility customer information to profit. These points raise a number of other issues that demand Commission consideration and action. Brief identification of those issues and actions follows; however, the Division will save further comment for further proceedings where more facts might be available and other parties' recommendations considered.

- Should the Commission order the proceeds, or an equivalent dollar amount, of the Dominion-HomeServe transaction be credited to the customer groups whose information was sold?
- Should the Utility pay a fine for violating the Commission's order requiring non-discriminatory administration of the third-party billing tariff? If so, in what amount? Is an individual fine per customer identity sold appropriate?

[3] There is no indication thus far that HomeServe has done anything inappropriate. It appears to be properly licensed, provide a valid product, and be unburdened by the Commission's statutes, rules, tariffs, and orders.

- Should the Commission require greater differentiation of Dominion brands so the Utility is more readily identifiable by customers?
- Should the Commission impose restrictions on broader corporate access to Utility customer information?
- Should a customer privacy policy be included in the Utility's tariffs (and considered for other utilities too)?

CONCLUSION

The Division recommends the Commission suspend tariff section 8.08 governing third party billing until the Commission takes further action regarding the Solicitation Letter. The Commission should consider a number of other actions to protect the public interest. The Commission should seek further comments from other interested parties, including the Office of Consumer Services, the Utility, and other service contract providers involved in last year's tariff proceedings.

CC: Kelly Mendenhall, Questar Gas Company
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